

TD BANK, N.A. f/k/a TD Banknorth, N.A.

Plaintiff,

v.

RICHARD G. GAGNON a/k/a Richard G.
Gagnon, Sr. and DAVID T. GAGNON a/k/a
Dave T. Gagnon,

Defendants.

CIVIL ACTION NO. _____

NOW COMES Plaintiff, TD BANK, N.A. f/k/a TD Banknorth, N.A., by and through its undersigned counsel, Duane Morris LLP, for its Complaint against Defendants, Richard G. Gagnon a/k/a Richard G. Gagnon, Sr. and David T. Gagnon a/k/a Dave T. Gagnon, respectfully shows:

1. Plaintiff, TD Bank, N.A. f/k/a TD Banknorth, N.A. (“TD Bank”), is a national banking association created and existing under the laws of the United States of America. TD Bank’s main office, as set forth in its articles of association, is located in Wilmington, Delaware. It has its headquarters and main operation in Cherry Hill, New Jersey. It is therefore, a citizen of Delaware.

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JURISDICTION, VENUE AND VICINAGE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 by virtue of complete diversity of citizenship, insofar as TD Bank was, and is at the time of the filing of the Complaint, a citizen of the State of Delaware, Defendants are and at the time of the filing of the Complaint, citizens of the state of Connecticut, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims stated in this Complaint occurred in this district.

3. Pursuant to Rule 3(b), Local Rules of the United States District Court for the District of Maine, this matter should be assigned to the Bangor Vicinage insofar as the property which is the subject of this action is located in Aroostook County.

COUNT I – FORECLOSURE BY CIVIL ACTION

4. The Gagnons are the owners of the real property located at 407 US Route 1, Frenchville, County of Aroostook, State of Maine, 04745 (the “Property”) by virtue of a warranty deed (the “Deed”) from James Chamberland and Rita Chamberland, dated May 2, 2003 and recorded in the Aroostook North County Registry of Deeds on May 7, 2003 in Book 1349, Page 242. A copy of the Deed is attached hereto as Exhibit A.

5. On July 5, 2006 the Gagnons executed and delivered to TD Bank a certain promissory note in the original principal amount of \$80,000.00 (the “Note”). A copy of the Note is attached hereto as Exhibit B.

6. To secure the Note, the Gagnons executed and delivered to TD Bank a mortgage dated July 5, 2006 and recorded in the Aroostook North County Registry of Deeds in Book 1509, Page 24 (the “Mortgage”). A copy of the Mortgage is attached hereto as Exhibit C.

7. On or about November 4, 2015, the Gagnons executed and delivered to TD Bank a loan modification agreement with a modified principal balance of \$64,348.75 (the “Loan Modification”). A copy of the Loan Modification is attached hereto as Exhibit D.

8. Effective May 31, 2008, TD Banknorth, National Association, changed its name to TD Bank, National Association.

9. TD Bank is the holder of the Note and Mortgage.

10. TD Bank is the owner of the Note.

11. The Gagnons are in default of the Note, having failed to make the monthly payment due March 4, 2016, and having failed to make all payments due thereafter. As a result, the Gagnons have breached a condition of the Mortgage.

12. In compliance with the Note and Mortgage and/or 14 M.R.S.A. § 6111, on November 22, 2016, TD Bank caused to be sent a Notice of Right to Cure to the Gagnons by certificated mailing (the “Default Letter”). Copies of the Default Letter are attached hereto and made a part hereof as Exhibit E.

13. To date, the Gagnons have failed to cure the default. Accordingly, there is now due and owing to Plaintiff the outstanding principal balance under the Note and Mortgage, including accrued interest, late charges and applicable fees through November 22, 2016, the sum of \$89,426.92.

14. In order to protect its security interest, TD Bank likely will be further compelled during the pendency of this action to advance payments for tax, water and sewer assessments,

insurance premiums, and other charges affecting the Property, or some part thereof, and TD Bank requests that any such sum or sums to be paid be added to the Note and be deemed secured by the Mortgage and be further deemed a valid lien on the Property.

3. By virtue of the Gagnons' breach of the terms of the Note and Mortgage, TD Bank, is entitled to: (i) judgment in its favor and against the Gagnons in the amount of \$89,426.92, together with interest from November 23, 2016, at the rate of \$12.7290969 per diem to the date of judgment, and other costs and charges collectible under the mortgage; (ii) an order setting the priority of the liens, in accordance with the allegations set forth above; (iii) a Judgment of Foreclosure and Sale in conformity with Title 14 M.R.S.A. §6322, and allowing for the sale to be conducted in accordance with 14 M.R.S.A. §6323 or, in the alternative, by the United States Marshal Service; and (iv) an Order allowing exclusive possession of the real estate to TD Bank upon the expiration of the statutory 90 day period of redemption.

WHEREFORE, TD Bank prays that this Honorable Court:

A. Enter an order that forever bars and forecloses all rights, claims, liens and any equity of redemption in the Property of the Gagnons, and every person whose conveyance or encumbrance is subsequent or subsequently recorded after the filing of a copy of the Complaint instituting this action in the Aroostook North County Registry of Deeds.

B. Enter an order setting the priority of the parties and amounts due such parties, in accordance with the allegations set forth in the Complaint;

C. Enter judgment in favor of TD Bank and against the Gagnons in the amount of \$89,426.92 together with interest from November 23, 2016, at the rate of \$12.7290969 per diem to the date of judgment, and other costs and charges collectible under the Note and Mortgage;

D. Enter Judgment of Foreclosure and Sale in conformity with Title 14 M.R.S.A. §6322, and allowing for the sale to be conducted in accordance with 14 M.R.S.A. §6323 or, in the alternative, by the United States Marshal Service;

E. Enter an Order against the Gagnons allowing Plaintiff to be paid the amount adjudged to be due Plaintiff, with interest thereon to the time of such payment, together with the costs and expenses of this action and the expense of said sale;

F. Enter an Order that the Gagnons are liable for any deficiency balance remaining due TD Bank after the sale of the Property and application of the proceeds of the sale;

G. Enter an Order allowing exclusive possession of the real estate to TD Bank upon the expiration of the statutory 90-day period of redemption.

H. Grant Plaintiff such other relief as the Court may determine to be just and equitable.

Dated: March 8, 2017

Respectfully submitted,

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